

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

ORLANDO SWAIN DARTSON	§	
v.	§	CIVIL ACTION NO. 5:06cv180
PAUL KASTNER, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Orlando Dartson, proceeding *pro se*, filed this lawsuit under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Dartson complained about the medical care which he received at the Federal Correctional Institution at Texarkana. He said in his lawsuit that he had not exhausted his administrative remedies, explaining that this was because of the “emergency nature” of his complaints and that the administrative grievance procedure is “non-functioning;” Dartson says that another, un-named inmate recently learned that the staff denied his grievance without any investigation done and without evidence to support the decision.

On October 23, 2006, the Magistrate Judge issued a Report recommending that Dartson’s lawsuit be dismissed without prejudice for failure to exhaust administrative remedies. The Magistrate Judge observed that according to the U.S. Supreme Court, federal prisoners must exhaust their administrative remedies prior to seeking relief through a Bivens action in federal court. Dartson did not do so, and the Magistrate Judge concluded that his claim of an “emergency” did not vitiate the requirement of exhaustion.

Dartson received a copy of the Magistrate Judge's Report on October 25, 2006, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to exhaust administrative remedies. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED this 13th day of December, 2006.**

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE